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to the payment of the secured debts, being no warrant for the payment of an unsecured debt, but the application of the proceeds should be disturbed only to the extent necessary to protect the secured debts.

**2. Same—Creditor Not Estopped.**—Decedent, after conveying land by deed of assignment to secure debts, including one to defendants and others to complainants, sold the land; the proceeds thereof being applied to the payment of an unsecured claim due defendants. Complainant sued to correct the application; the case being referred to a commissioner. Defendants' exception to his report recited that he decided the proceeds should not have been applied to defendants' unsecured claim, and applied them to their secured claim, and that he suggested that the unsecured debt was barred by limitation, and the exception recited that one of the creditors who had a secured debt conceded the correctness of the exception. Held, that the creditor's concession did not commit him to the correctness of the application of the proceeds to defendants' unsecured debt.

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ARMISTEAD *v.* KIRBY et al.

March 14, 1907.

[56 S. E. 570.]

**1. Mortgages—Trust Deed—Foreclosure—Deceased Beneficiary.**—Where complainant executed a trust deed, conveying certain land to secure payment to K., her heirs and assigns, of a specified sum, there could be no lawful sale under the deed after K.'s death until there had been an administrator appointed for K.'s estate.

**2. Same—Actual Notice.**—Where a creditor secured by a deed of trust died, leaving no unsatisfied debts, and a sole distributee, and it was agreed between the debtor and such distributee that the trustee might proceed to sell property for payment of the debt, such sale could not properly be made without actual notice to the debtor.

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McCURDY *v.* O'ROURKE.

March 14, 1907.

[56 S. E. 573.]

**Wills—Construction.**—Testator devised to one son certain property for life, remainder to his children, if any, the property to otherwise pass to a trustee in trust for testator's second son, upon the trusts declared in the next item of the will, which item devised certain other property to the trustee, the latter out of the rents to pay to said second son \$600 per year while unmarried, or, if married, \$1,200 per year for the balance of his life. The surplus, if any, above such sums was to be invested; the principal and interest with the real